

# Senate Budget & Fiscal Review

*Senator Wesley Chesbro, Chair*



## Subcommittee No. 3 on Health, Human Services, Labor, & Veterans Affairs

Senator Wesley Chesbro, Chair  
Senator Gilbert Cedillo  
Senator Tom McClintock  
Senator Bruce McPherson  
Senator Deborah Ortiz

May 22<sup>nd</sup>, 2004 (Saturday)  
9:00 AM  
Room 4203  
(Diane Van Maren, Principal Consultant)

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<u>Item</u>	<u>Description</u>
4440	Department of Mental Health— <i>Remaining Issues</i>
4300	Department of Developmental Services— <i>Remaining Issues</i>

**PLEASE NOTE:** ALL previous actions taken by the Subcommittee remain, unless the Subcommittee otherwise modifies the proposal at the May Revision. The “VOTE ONLY” CALENDAR may include the modification or denial of proposals, as well as acceptance of proposals. This will be noted in the Agenda as applicable.

No public testimony will be taken on “Vote Only” items.

Testimony will be limited today due to time constraints in processing the Governor’s May Revision. Please be direct and brief in your oral comments so that others may have the opportunity to testify. Written testimony is also welcomed. Thank you for your consideration.

## **I. ITEMS RECOMMENDED FOR “VOTE ONLY”**

### **A. Item 4440--Department of Mental Health (DMH)**

#### **1. Enforce Mental Health Parity—Proposed Uncodified Trailer Bill Language (Vote Only)**

**Background and Governor’s January Budget:** Recent legislation required all managed care plans to provide “parity” between physical health and mental health treatment. Counties are continuing to provide and pay for services for private managed care enrollees, especially crisis services, because the managed care plans do not have adequate services and do not reimburse county mental health for services provided to their covered populations. For example, one County Mental Health Plan (County MHPs) documented that four percent of services provided to the covered populations were reimbursed by the plans.

As part of the January budget package, the Administration made reference to “enforcing existing regulations that require private managed care plans to provide access to crisis services for their enrollees.” **In follow-up conversations with the Administration, the following information was noted:**

- There are now federal parity requirements and increasingly, more states like California are requiring parity;
- **Existing state regulations should be enforced by either ensuring that managed care plans have an adequate crisis network or that they reimburse county mental health programs** if they’re using that resource to meet the needs of their enrollees;
- **County MHPs report that private managed care plans are increasingly using county mental health crisis services to meet the needs of their enrollees.** This is cost that is being shifted from the private to the public sector. Reimbursing counties for these urgent/emergent services or providing access through their network for this service would reduce some of the burden on an overwhelmed public mental health system.

**According to very preliminary fiscal estimates from the Administration, if mental health parity was enforced more consistently, there could be from \$5 to \$10 million in private managed care funding that could be provided to the County MHPs.**

Though this issue was raised in budget documents (Governor’s Budget Summary—“A” Pages), no other details have been forthcoming from the Administration.

**Subcommittee Staff Comment and Recommendation:** In response to the Administration’s proposal, it is recommended to adopt the following **uncodified trailer bill language as follows:**

“The Department of Mental Health, in collaboration with the Department of Managed Health Care, Department of Insurance and applicable representatives from the California public and private mental health systems shall identify the core reasons mental health parity in California is not potentially being achieved, the barriers to achieving it, and what approaches over the short-term and longer-term can be done in order to effectuate a more comprehensive mental health system in California, both public and private.” This information shall be provided to the Legislature by March 1, 2005.”

## **2. Technical Adjustment to Governor's May Revision—CDC Beds for State Hospitals**

**Governor's May Revision—Technical Correction:** The Subcommittee has been informed that a technical correction is needed to the State Hospital item in order **to capture an additional \$2 million in reimbursements from the Department of Corrections to hire 26.3 positions in the budget year to provide services to 25 CDC-related patients.**

The DMH did not request these resources in the May Revision because the DMH was not aware that the May Revision would include these funds in the CDC budget. **As such, the Department of Finance has requested the Subcommittee to take this action to make the correction in the May Revision.**

**Subcommittee Staff Comment and Recommendation:** Subcommittee staff concurs with the need to make this technical adjustment for the Governor's May Revision to be balanced.

**Budget Issue:** Does the Subcommittee want to make a technical adjustment to the May Revision to provide an increase of \$2 million (Reimbursement) in the DMH State Hospital budget to account for the 25 CDC beds?

## **3. Sexually Violent Predator Evaluations**

**Background and Governor's May Revision:** Sexually Violent Predators (SVPs) have committed two felony acts of sexually violent crimes, as defined in law: rape, child molestation, and other horrible crimes. They also have a diagnosed mental health illness that predisposes them to re-offend. There are currently nearly 500 individuals at Atascadero State Hospital who are SVPs.

**The May Revision requests a reduction of \$1.5 million (General Fund) to reflect a decrease in the number of SVP evaluations to be performed by private contractors and decreased costs for evaluator testimony.**

**Subcommittee Staff Comment and Recommendation:** The Subcommittee staff concurs with the May Revision.

**Budget Issue:** Does the Subcommittee **want to adopt** the May Revision?

#### **4. Sexually Violent Predator Conditional Release Population Increase**

**Background and Governor's May Revision:** Sexually Violent Predators (SVPs) have committed two felony acts of sexually violent crimes, as defined in law: rape, child molestation, and other horrible crimes. They also have a diagnosed mental health illness that predisposes them to re-offend. There are currently nearly 500 individuals at Atascadero State Hospital who are SVPs.

**Governor's May Revision:** The May Revision requests an increase of \$218,000 (General Fund) to support the costs associated with the release of additional Sexually Violent Predators from the State Hospitals into the Conditional Release Program. This request is based on full year funding for six clients and half-year funding for five clients. These costs include treatment and living costs, as well as the overall contract with Liberty Healthcare.

**Budget Issue:** Does the Subcommittee **want to adopt** the May Revision?

**B. Item 4300--Department of Developmental Services (DDS) (Vote Only)**

**1. Proposed Organizational Change Related to Protective Services at the DCs**

**Background and Governor's January Budget:** The January Budget proposed trailer bill language to amend Sections 4491 and 4493 of Welfare and Institutions Code regarding safety issues at the state Developmental Centers. Specifically, the proposed language (1) provided increased authority to the Director of the DDS to be responsible for preserving the peace, and related security items, at the Developmental Centers, and (2) clarified the role of the hospital administrator and peace officers at the facilities.

**Prior Subcommittee Hearing (May 3<sup>rd</sup>):** The Subcommittee adopted the January proposal.

**Governor's May Revision—Rescinds January Language and Proposes New Changes:** The May Revision proposes additional changes to the January proposal. Specifically, the proposed language (1) provides increased authority to the Chief of the Office of Protective Services to be responsible for preserving the peace, and related security items, at the Developmental Centers, and (2) clarifies the role of the hospital administrator and peace officers at the facilities. **The proposed May Revision language is as follows:**

**Amend Welfare and Institutions Code section 4491 as follows:**

~~The hospital administrator~~ *Chief of the Office of Protective Services* shall be responsible for preserving the peace ~~in the hospital buildings and grounds at facilities operated by the Department of Developmental Services~~ and may arrest or cause the arrest and appearance before the nearest magistrate for examination, of all persons who attempt to commit or have committed a public offense thereon.

**Amend Welfare and Institutions Code section 4493 as follows:**

~~The hospital administrator of each state hospital may designate, in writing, as a police officer, one or more of the bona fide employees of the hospital. The hospital administrator~~ *Chief of the Office of Protective Services may designate as a* ~~and each such~~ *peace officer those investigators and peace officers assigned to the Office of Protective Services. The Chief of the Office of Protective Services, and each peace officer and investigator shall have the powers and authority conferred by law upon peace officers as specified in Section 830.38 and 830.3(h) of the Penal Code. Under the direction of the Chief, such ~~police~~ *peace officers and investigators shall receive no compensation as such and the additional duties arising therefrom shall become a part of the duties of their regular positions. When and as directed by the hospital administrator, such police officers shall enforce all the laws, and the rules and regulations of the hospital facility, to preserve peace and order on the premises thereof, and protect and preserve the property of the state.**

**Subcommittee Staff Comment and Recommendation:** Subcommittee staff recommends to **(1)** rescind the April 19<sup>th</sup> action to adopt the Governor's January proposal, **and (2)** reject the May Revision. **The May Revision reflects a different policy course than January and, as such, illustrates that this issue should be brought forth as a policy bill. There are no dollar savings attributable to the proposal and there is no apparent need as to why this action is required for any budgetary reason.**

**Budget Issue:** Does the Subcommittee want to **(1)** rescind its April 19<sup>th</sup> action to adopt the Governor's January budget regarding trailer bill language, and **(2)** reject the May Revision? *(This action would delete the discussion from the budget deliberations.)*

**2. Trailer Bill Language Regarding Conversion of Habilitation Programs—Postpone Job-Coach 1:4 For Habilitation**

**Background:** Section 19356.6 of Welfare and Institutions Code, amended in the omnibus bills that accompanied the Budget Act of 2002, changed the minimum Habilitation Supported Employment group size from three consumers to four, effective July 1, 2002, with funding to continue for existing groups of three consumers until June 30, 2004. **It has been recently recognized that there will be some Habilitation Service Providers who are operating at a consumer-to-job-coach ratio of 1 to 3, and who will be unable to achieve the required job-coach-to-consumer ratio of 1 to 4 effective by the July 1, 2004 cut-off date.**

**Governor's May Revision:** The May Revision proposes an increase of \$1.7 million (General Fund) in the Regional Center estimate for the Purchase of Services because there will be about 108 groups (324 people) who will **not successfully transition**. As such, the May Revision assumes that these people will lose their jobs and be placed in more expensive, non-employment programs (i.e., Day Programs) at a cost of about \$1.7 million.

**Subcommittee Staff Comment and Recommendation:** Since some supported employment groups of three will not be able to transition by the July 1, 2004 date, **it is recommended to (1) adopt trailer bill language** to just for programs as specified below, and **(2) reject the \$1.7 million** increase because it would not be necessary. **The suggested trailer bill language is as follows:**

Section 4865.1. A regional center shall continue to pay the existing rate for a supported employment placement group composed of three consumers when the provider submits to the Department of Developmental Services and the regional center, by July 30, 2004, documentation that the:

- a. Group was established prior to July 1, 2002, and
- b. Group was at the 1:3 ratio on May 1, 2004, and
- c. employer will only accommodate a group of 3.

In consultation with the regional center, the Department of Developmental Services shall determine whether the requirements of 4665.1 have been met. The Department's decision shall be final.

Groups paid under this section shall meet the requirements of subdivision (r) of Section 4851 by July 1, 2005 or be subject to termination of funding pursuant to subsection (b) of Section 4860.

**Budget Issue:** Does the Subcommittee want to **(1)** adopt trailer bill language as referenced above, and **(2)** reduce by \$1.7 million?

### **3. Fund Shift Related to Title XX Funds—Provide General Fund Backfill**

**Background:** The federal Temporary Assistance for Needy Families (TANF) law allows the state to transfer up to 10 percent of its TANF funds to Title XX. The transferred TANF funds must be spent on children or their families with incomes below 200 percent of poverty.

Once transferred, the funds may be used to support any programs that meet the stated Title XX goals, including achieving economic self-sufficiency, preventing abuse or neglect, enabling families to stay together, and preventing inappropriate institutional care.

The DDS currently receives about \$48 million in transferred Title XX funds from the Department of Social Services. The DDS portion of the Title XX moneys is determined by the DSS in accordance with the level of funding needed for CalWORKS.

**Governor's May Revision:** The May Revision increases TANF fund transfers to support **non-CalWORKS** activities to \$176.5 million. The May Revision proposes the following new or increased TANF transfers: **(1)** \$56 million to Foster Care, **(2)** \$52.5 million to Child Welfare Services, and **(3)** \$48 million to the DDS.

**Subcommittee Staff Comment and Recommendation:** Since 1998-99, TANF funding for **non-CalWORKS** programs has increased by 50 percent to \$1.1 billion, whereas CalWORKS Program funding has decreased by \$757.5 million in the same period. The core CalWORKS Program needs to utilize the TANF Funds to sustain core aspects of the program, such as providing direct public assistance (food and basic housing).

Therefore, it is recommended to reject the Title XX transfer and restore an equal amount of General Fund support which is \$48 million (General Fund).

**Budget Issue:** Does the Subcommittee want to adopt the staff recommendation, as noted above?

### **4. California Developmental Disabilities Information System (CADDIS) Project**

**Background and Governor's May Revision:** The CADDIS is an integrated case management and fiscal accounting system that is being implemented at the Regional Centers. The target date for implementation of CADDIS in all 21 Regional Centers had been June 2004. **However, the May Revision proposes to delay implementation until December 2004, or six months later. This delay is the result of testing and data conversion issues.**

The May Revision proposes to expend \$5.1 million (General Fund) appropriated for this purpose in the Budget Act of 2001, but that will revert on June 30, 2004, be re-appropriated to allow for expenditure in 2004-05. The Administration has also requested \$1.1 million (General Fund) for CADDIS maintenance and support, and \$1 million (General Fund) for increased data storage and data security (for the Health and Human Services Data Center).

**Legislative Analyst Office Recommendation:** The LAO notes that several of the Administration's proposal to increase federal funds are contingent on implementation of

CADDIS. While the project is clearly needed, the LAO is concerned about the DDS' ability to successfully implement this new system.

Therefore, the LAO is recommending approval of the May Revision to continue funding for CADDIS, as well as Budget Bill Language as follows (two pieces):

**Item: 4300-001-0001**

**Provision X.** On or before **October 1**, 2004, the Department of Finance shall provide to the chairpersons of the budget committees in each house of the Legislature and the Chairperson of the Joint Legislative Budget Committee an oversight report on the Department of Developmental Services' California Developmental Disabilities Information System Project. The report shall include, but is not limited to, an overall project status report identifying the project's tasks that have been completed and those which are still outstanding, an assessment of the project's ability to meet critical deadlines, and actions the department must take to address project and contract management issues identified by the project's independent oversight consultant and the Department of Finance.

**Provision X.** Beginning July 1, 2004, the Department of Developmental Services shall provide, on a quarterly basis, to the Chairperson of the Joint Legislative Budget Committee copies of the monthly status and oversight reports submitted to the Department of Finance for the California Developmental Disabilities Information System Project.

**Subcommittee Staff Recommendation:** Subcommittee staff concurs with the LAO.

**Budget Issue:** Does the Subcommittee want to adopt the LAO recommendation to **(1)** adopt the May Revision fiscal amount for CADDIS, and **(2)** adopt Budget Bill Language as crafted by the LAO?

## **5. Reversion for the Bay Area Project**

**Background and Governor's May Reversion:** The May Revision proposes that Item 4300-495 be added with language to permit the reversion of \$5 million (General Fund) for the Bay Area Project in 2003-04 due to the one-year delay in the closure of Agnews Developmental Center. **The proposed language is as follows:**

“ 4300-495 Reversion, Department of Developmental Services. As of June 30, 2004, the balances specified below of the appropriations provided in the following citations shall revert to the balance of the fund from which the appropriation was made:

0001 –General Fund

(1) Item 4300-003-0001, Budget Act of 2002 (Chapter 379, Statutes of 2002), as reappropriated in Item 4300-490, Budget Act of 2003 (Chapter 157, Statutes 2003). \$5,00,000 in (1) 20-Developmental Centers Program.

**Subcommittee Staff Comment and Recommendation:** Subcommittee staff concurs with the May Revision to revert these funds in the current year due to the delay in the closure of Agnews Developmental Center.

**Budget Issue:** Does the Subcommittee want to adopt the May Revision?



## **6. Administration's Revised Day Program Rate Freeze Trailer Bill Language**

**Governor's May Revision and Prior Subcommittee Action (April 19<sup>th</sup>):** The Administration has proposed the following trailer bill language to clarify the Day Program rate freeze. This rate freeze, enacted as part of the Budget Act of 2003 deliberations, is to be continued from the 2004-05 fiscal year into the next fiscal year.

The Administration's revised trailer bill language is as follows:

Notwithstanding any other provision of law or regulation, during the 2004-05 fiscal year, the department may not approve any rate adjustment for a habilitation services program that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2004, unless the regional center demonstrates that the rate adjustment is necessary to protect the consumer's health and safety and the department has granted prior written authorization.

**Subcommittee Staff Comment and Recommendation:** Subcommittee staff has raised no issues with this proposed language.

**Budget Issue:** Does the Subcommittee **want to adopt the May Revision?**

## **II. ITEMS FOR DISCUSSION**

### **A. Item 4440 Department of Mental Health**

#### **STATE HOSPITAL FUNDING**

##### **1. Sexually Violent Predators (SVPs)—Several Issues**

**Background Overall:** The SVP statute has been in effect since January 1, 1996. SVPs have committed two felony acts of sexually violent crimes, as defined in law: rape, child molestation, and other defined sexual crimes. They also have a diagnosed mental health illness that predisposes them to re-offend.

**All SVPs first serve their sentence in a CDC prison. About six months prior to the end of their sentence, they are referred to the DMH for treatment evaluation.** The DMH orders evaluations to determine whether the offender potentially qualifies for a SVP commitment. **The Superior Courts are always the arbiters of commitments. If a jury or judge find that it is likely that an individual would re-offend, then the individual is committed to the DMH for treatment and supervision. The statutory length of commitment is two years.** The DMH states that **almost all SVPs are recommitted every two years.** There are currently nearly **500 individuals at Atascadero State Hospital who are SVPs.**

**The Sex Offender Commitment Program designed for SVP patients is organized into five phases.** The treatment model is based on relapse prevention. **The first four phases are inpatient.** The patient graduates to the next phase based on their completion of specific tasks, rather than a time line. Because of a variety of factors such as the waxing and waning of patient motivation over time, it will take each patient a different length of time to complete a particular phase of treatment.

**The fifth phase of the treatment program is intended to be outpatient** and is presently conducted under the auspices of the Conditional Release Program. Liberty HealthCare is responsible for all aspects of SVP Phase V treatment throughout California. The Liberty contract now costs \$886,602 (General Fund). There have been three SVPs released as of March 2004. Liberty currently supervises two SVPs in the community.

**Governor's January Budget:** The Governor's January Budget proposed significant changes to the state's SVP Program. **These proposed changes and their savings are as follows:**

- **1. Reduction of \$10.7 million (General Fund)** in the State Hospital item to reflect a proposal to **return 100 pre-commitment SVPs** (those individuals who have not completed the SVP commitment process) **to local jurisdiction** (county jail of last CDC commitment) until the judicial process had been completed and a commitment has been ordered.
- **2. Reduction of \$823,000 (General Fund)** from the State Hospital item to reflect a proposal to restructure the treatment program for SVPs, to include a new secure SVP residential licensing category. The SVP patients would be divided into three categories with two of the groups attending treatment on an "outpatient" basis within the Coalinga State Hospital. This would reduce the number of level-of-care staff that would be required.
- **3. Reduction of \$2 million (General Fund)** in the department support item for SVP evaluations and court testimony **based on the on the enactment of statute that would replace the current two-year SVP commitment period with one that would be indeterminate in length.** The DMH contends that this is intended to eliminate the costly and time consuming judicial process that is currently required to be must be completed every two years to renew an SVP commitment.

**The DMH has also proposed very extensive trailer bill language with this package.**

**Subcommittee Staff Comment and Recommendation:** The policy issues presented under the proposals are complex and potentially wide ranging, including issues of constitutionality. **As such, it is recommended for the Subcommittee to adopt the Administration's estimated budget savings but to send the entire SVP trailer bill package to the Policy Committee process, most likely Public Safety.**

**Subcommittee Request and Questions:** The Subcommittee has requested the DMH to respond to the following questions:

- **1. DMH, Please provide a brief summary of each of the proposals.**

**Budget Issue:** Does the Subcommittee want to adopt the proposed budget savings and send the entire SVP trailer bill language package to Policy Committee?

## **B. Item 4300 Department of Developmental Services (*Discussion*)**

### **State Developmental Centers**

#### **1. Agnews Developmental Center—\$11.1 Million Proposed for Unclear Plan**

**Background—Past Year:** In 2003-04, the Administration announced its intent to close Agnews Developmental Center (Agnews) as of July 2005. **With this announcement, DDS commenced the development of a closure plan. Among other things, the plan is to address:**

- **The impact on residents and their families.**
- **Anticipated alternative placements** for residents.
- **Where services will be obtained** that, upon closure of the DC, will no longer be provided by that facility.
- **Potential job opportunities for DC employees** and other efforts made to mitigate the effect of closure on employees.

An *Advisory Committee* consisting of consumers currently and formerly living at Agnews, their families, employees of Agnews, Regional Centers, advocates, and others **was established and first met on February 22, 2003. In addition to this Advisory Committee, the DDS also established various *Planning Teams* with responsibility to assist in the closure process.**

Because all but about 50 individuals living at Agnews are consumers of the three Bay Area Regional Centers—Golden Gate RC, San Andreas RC, and RC of the East Bay—the effort has been termed **the Bay Area Project. One of the primary objectives of the closure plan will be to identify and propose ways to strengthen the Bay Area services system to ensure the development of services and supports throughout the region so individuals may remain in their home communities. The three RCs are actively participating in this effort and are working together as a team to facilitate comprehensive planning for the entire region rather than just for their own, individual areas.**

**The Planning Teams include, among others, the following:**

- A “**Futures Planning Team**” to develop and implement a person-centered planning process that will **result in the identification of a preferred future for *each* Agnews resident.**
- A “**Community Development Team**” to coordinate the development of services and supports that will be responsive to the needs of Agnews’ residents transitioning to community services.
- A “**Quality of Services Planning Team**” to assure that Agnews continues to provide services consistent with the residents’ needs.

Agnews presently has about **400 residents**. Over 85 percent have families who play a significant role in their lives. Over two-thirds of those families reside in the Bay Area. About 60 percent have lived at Agnews for over 20 years. Further, about 37 percent require extensive assistance with personal care, eleven percent have enduring medical needs, and 50 percent need a highly structured service that supports positive behaviors.

**Administration's April 1, 2004 Announcement:** In a letter dated April 1, 2004, the Administration announced the **postponement of the Agnews closure until June 30, 2006** (one-year later than originally thought). The decision to postpone the closure was based on the Administration's assessment of the existing capacity of the Bay Area community to provide the range and types of services needed by 2005.

The letter stated also that postponement was needed in recognition that (1) **up to 100** Agnews residents would need to be transferred to **Lanternman DC**, and (2) more community capacity was needed in order to ensure the health and safety of placing Agnews' residents in the community.

The letter also notes that a closure plan developed pursuant to Section 4474.1 of Welfare and Institutions Code will be completed and submitted no later than April 1, **2005** (i.e., code requires that a plan be presented to the Legislation by April of the year before closure.)

The DDS further articulated with stakeholders' recommendations that the following issues **must be addressed prior to the closure:**

- The stability of living arrangements must be assured;
- An appropriate array of service options designed to meet the special need of Agnews' residents must be available;
- Systems must be in place to ensure continuity of services.
- On-going quality of care must be assured.

**Governor's May Revision:** The May Revision proposes **an increase of \$11.1 million** (General Fund) to commence with transitioning 200 individuals from Agnews.

Specifically, \$11 million of this amount is proposed for facility preparation at **Sonoma Developmental Center** to renovate buildings that have been used for other purposes to accommodate about **200 consumers** currently residing at Agnews that would be transferred to Sonoma in 2005-06. Most of the request for facility preparation expenditures is to purchase Day Treatment portable buildings (\$8.5 million General Fund). The remaining **\$150,000** would be used to fund increases in employee costs related to staff training for assistance in career transitioning to the community.

It should be noted that the May Revision reflects **two substantial changes** from the April 1 letter. The May Revision increases from 100 to 200 residents going from Agnews to another Developmental Center, and it shifts the proposed transfer of individuals from the Lanternman DC to Sonoma DC.

**Subcommittee Staff Comment and Recommendation:** It is well recognized that the transition of consumers to new living arrangements, as well as all of the many myriad of issues that need to be discussed, resolved and planning for, in the closure of a large facility is extremely complex, particularly given the intensive medical needs of many of the consumers who reside at Agnews. **This is exactly why the Legislature crafted Section 4474.1 of Welfare and Institutions Code—to have the Administration provide a comprehensive plan, replete with policy and fiscal implications as one package.** Such a package was provided to the Legislature with the closure of both Stockton and Camarillo Developmental Centers.

**In the absence of having such a comprehensive plan, or similar document that offers a perspective on the policy options and fiscal considerations associated with those options, it is extremely difficult to know what the next steps are and how this particular proposal fits into that vision.** Though the Administration has been crafting a plan, said plan has not yet been released due to continued deliberations within the Administration. This is completely understandable given the complexities of issues that need to be resolved and the reality of having a new Administration.

With respect to the policy and fiscal issue presented at the May Revision, expanding Sonoma DC is not a particularly constructive proposal for several reasons. First, Sonoma is a large campus already and adding 200 additional residents is very significant. It is equivalent to an increase of 25 percent in the number of residents (800 residents now to 1, 000 residents if approved).

**Second, this arrangement is intended to be temporary but it is not clear as to what that would mean.** Further, is it prudent policy to expend at least \$11.1 million, likely to increase to be much more once facility operations commence, for temporary arrangements of potentially less than one year? Let alone all of the transition aspects for the consumers themselves.

Three, what of the other policy and fiscal issues? How will these be addressed? Specifically, issues of building capacity in the greater-Bay Area for community placement and supports has not been addressed at all in this proposal.

**Therefore, in an effort to facilitate the closure of Agnews by 2006 but to also provide oversight by the Legislature as to the comprehensive policy and fiscal options that will be coming forward, it is recommended to (1) establish a special Item within the budget (Item 4300-105-0001 for example) and appropriate the \$11.1 million (General Fund) to this Item, (2) adopt Budget Bill Language (as shown below), and (3) reject the administration's proposal.**

**Item 4300-105-0001. Special Item for Agnews Transition**  
**Provision X.**

“Funds within this Item may only be expended to facilitate the development of community-based living options for current residents of Agnews Developmental Center. The Department of Developmental Services, through the California Health and Human Services Agency, shall submit an expenditure plan for these funds to the Joint Legislative Budget Committee. The plan shall not be effective without the approval of the Chairperson of the Joint Legislative Budget Committee and shall be implemented no sooner than 30 days after being submitted to the Joint Legislative Budget Committee and no sooner than 30 days after a comprehensive closure plan for Agnews Developmental

Center, developed pursuant to Section 4474.1 of the Welfare and Institutions Code, has been submitted to the Legislature.”

**Subcommittee Request and Questions:** The Subcommittee has requested the DDS to respond to the following questions:

- **1. Please provide a brief update on the progress of the Bay Area Project.**
- **2. Please provide a brief summary of the key policies that will need to be discussed and decided over the course of the next 6 months.**
- **3. Please provide a brief summary of the May Revision, including timelines for facility preparation and the potential transition for consumers.**
- **4. When may a comprehensive plan on Agnews be provided to the Legislature—July or later?**

**Budget Issue:** Does the Subcommittee want to **(1)** establish a special item for appropriation of the \$11.1 million (General Fund) (4300-105-0001), and **(2)** adopt Budget Bill Language which serves as a mechanism to allocate the funds through the Administration and Legislature as needed and determined?

## **2. Developmental Centers Resident Population Estimate and Related Adjustments**

**Background:** State Developmental Centers (DCs) are fully licensed and federally certified as Medicaid providers via the California Department of Health Services. **They provide direct services which include the care and supervision of all residents on a 24-hour basis, supplemented with appropriate medical and dental care, health maintenance activities, assistance with activities of daily living and training.** Education programs at the DCs are also the responsibility of the DDS.

The DDS operates five Developmental Centers (DCs)—Agnews, Fairview, Lanterman, Porterville and Sonoma. setting Porterville is unique in that it provides forensic services in a secure setting. In addition, the department leases Sierra Vista, a 54-bed facility located in Yuba City, and Canyon Springs, a 63-bed facility located in Cathedral City. Both facilities provide services to individuals with severe behavioral challenges.

**Governor's May Revision:** The May Revision proposes expenditures of \$714.6 million (\$362 million General Fund), excluding state headquarter's support, to serve 3,307 residents who reside in the state Developmental Center system. This reflects a caseload decrease of 60 residents and a net decrease in funds of \$243,000 (\$32,000 General Fund) compared to the Governor's January budget. However, while the proposed budget for 2004-05 reflects savings from the on-going decline in the DC population, these savings are more than offset by increases in retirement costs and other factors, resulting in a net growth in DC expenditures of 1.4 percent in the budget year.

The Developmental Center estimate consists of the following core assumptions:

- **Reduces by \$2.5 million** (\$1.2 million General Fund) and 28 positions at the DC's to **reflect a reduced staffing** need due to a decline in the DC population. In addition, a decrease of one position is requested to allow redirection of resources for community facilities staffing contracts for critical but hard-to-fill positions.
- **Increase of \$12.9 million** (\$7.3 million General Fund) **to reflect the affect of increased employee compensation** costs that began in 2003-04 and are continuing into 2004-05. The current-year costs are included in the Omnibus Deficiency Bill (SB 1842).
- Rescinds the Governor's January Budget proposal to contract out for food services. **The Subcommittee rejected this proposal in it's April 19<sup>th</sup> hearing. As such, the Governor is conforming with the Legislature. No adjustment on this item is needed since the Subcommittee already increased funding by \$1.6 million (\$910,000 General Fund) to account for this proposal. The Subcommittee's prior action will therefore be retained.**
- Provides an increase of \$2.3 million (\$1.8 million General Fund) for janitorial contracts as needed at the DCs.
- Increases by \$750,000 (Reimbursements) for the Life Services Alternatives Project to assist consumers transitioned from the Agnews DC.



**Subcommittee Request and Questions:** The Subcommittee has requested the DDS to respond to the following questions:

- Please **provide a very brief overview** of the May Revision.

**Subcommittee Staff Comment and Recommendation:** Subcommittee staff recommends to **(1)** adopt the May Revision baseline estimate as noted, and **(2) retain the Subcommittee’s prior action from the April 19<sup>th</sup> hearing to restore funding to have state employees provide food services** (i.e., not contract out, since it is illegal).

**Budget Issue:** Does the Subcommittee **want to (1) adopt the May Revision base-line estimate and (2) retain the Subcommittee’s prior action from April 19<sup>th</sup> to restore funding to have state employees provide food services?**

## Community-Based Services and Regional Centers

### **1. May Revision “Base-Line” for the Purchase of Services at the Regional Centers (Current & Budget Years)**

**Background-- Purchase of Services (POS):** The DDS contracts with 21 not-for-profit Regional Centers (RCs) which have designated catchment areas for service coverage throughout the state. RCs purchase services for consumers and their families from approved vendors when “generic” services are not available or appropriate, and coordinate consumer services with other public entities. The **Purchase Of Services (POS) portion** of the Regional Center budget **accounts for about 80 percent of total expenditures.**

For budget development and allocation purposes, the **POS budget consists of four key categories—Residential Placement, Day Programs, Transportation and Other Services which includes health care, respite, support services and other miscellaneous services.**

**Background on Regional Center Operations:** The RC Operational budget covers the staff who provide the RCs’ direct services to consumers and their families, and the organizational functions in which they operate. **Generally, the RCs Operations budget consists of four components—(1) mandated services, (2) support functions, (3) special case add-ons, and (4) non-personnel costs.**

**Governor’s May Revision—Current Year (2003-04) Reduction:** The May Revision for the current-year **clearly reflects the affects of the cost containment instituted through the Budget Acts of 2002 and 2003.** (These specific cost containment actions were discussed and listed in the Subcommittee’s agenda from April 19<sup>th</sup>.) **As noted in the chart below, the current-year expenditures have decreased by \$68.2 million (decrease of \$76.9 million General Fund).**

**Table: Current-Year (2003-04) May Revision Comparison**

<b>Regional Center POS and Operations</b>	<b>January Budget 2003-04</b>	<b>May Revision 2003-04</b>	<b>Difference (millions)</b>
Purchase of Services	\$2,085 billion	\$2,018 billion	(\$67.5 million)
Early Start	\$20.1 million	\$19.8 million	(\$300,000)
Rehabilitation	\$22.9 million	\$22.5 million	(\$400,000)
<b>Subtotal</b>	<b>\$2,128 billion</b>	<b>\$2,060 billion</b>	<b>(\$68.2 million)</b>
Operations			
<b>Totals</b>	<b>\$424.8 million</b>	<b>\$424.8 million</b>	<b>--</b>
<b>General Fund</b>	<b>\$1,670.4 billion</b>	<b>\$1,593.5 billion</b>	<b>(\$76.9 million)</b>
Reimbursements	\$832.9 million	\$841.6 million	\$8.7 million
Program Development	\$1.1 million	\$1.1 million	--
Federal Funds	\$49.3 million	\$49.3 million	--
<b>Totals</b>	<b>\$2,553.7 billion</b>	<b>\$2,485.5 billion</b>	<b>\$68.2 million</b>

With respect to the Purchase of Services (POS) *reduction* of \$68.2 million (total funds), most of this reduction--\$49.7 million—was in the base estimate. As such, Regional Centers are purchasing services at a lower rate.

**Governor’s May Revision—Budget Year (2004-05):** The May Revision reflects total expenditures of \$2.293 billion (total funds) **which is about \$26.2 million (total funds) more** than estimated in the Governor’s January Budget.

**This revised amount is a combination of (1)** a reduction in the base due to recently enacted cost containment from 2003-04 and prior years, **(2)** a reduction in the growth trend due to these prior cost containment actions, **(3)** proposed statewide standards for the Purchase of Services (POS), and **(4)** a series of technical adjustments. The cost containment and growth trend reductions are discussed first, below. (The proposed statewide standards for POS are discussed separately under item 2 of this agenda, below.)

**First**, the May Revision for the Purchase of Services assumes cost containment actions that total to savings of \$100 million (General Fund). A summary of these measures is shown in the table below.

**Table: *Proposed Cost Containment Measures (2004-05) To Achieve \$100 million***

Proposed Cost Containment Issue	Total Savings	General Fund Savings	Reimbursements Savings
Adjustment to Base from 2003-04	\$67.5 million	\$67.5 million	0
Proposed Purchase of Services Standards	\$15.4 million	\$11.9 million	\$3.5 million
Family Cost Participation Program	\$600,000	\$500,000	\$100,000
Reduced Growth Trend	\$11.4 million	\$11.4 million	0
Increased Federal Fund Participation	0	8.7 million	(\$8.7 million)
<b>TOTAL SAVINGS</b>	<b>\$94.9 million</b>	<b>\$100 million</b>	<b>\$5.1 million net</b>

Again, as illustrated in the May Revision for the current year, the budget year May Revision estimate reduces the base because the cost containment enacted through the Budget Acts of 2002 and 2003 are having an effect at curtailing expenditures in the Purchase of Services item. These cost containment actions have reduced the base and have reduced the growth trend.

The Subcommittee has already taken action on several of these cost containment measures. These are referenced below.

**Prior Subcommittee Hearing (April 19<sup>th</sup>)—Continue Prior Cost Containment:** The Subcommittee adopted continuation of all prior year cost containment measures, along with trailer bill language as designated in that hearing. These actions remain in effect and will be technically fiscally updated to reflect the May Revision caseload changes. The cost containment measures are summarized below.

- Reduction of \$10 million as an unallocated reduction.
- Continue application of the federal standard for substantial disability.
- Continue elimination of the SSI/SSP rate pass-through to Community Care Facilities.

- Continue a service level freeze for Community Care Facilities.
- Continue suspension of funding for start-up of new services unless it was associated with the placement of an individual in the community.
- Continue a rate freeze on Adult Day Programs and in-home respite services related to any program design modifications.
- Continue a rate freeze for vendor-provided services conducted under contract to the Regional Centers.
- Continued to extend the amount of time allowed for the Regional Centers' to conduct assessment of new consumers from 60 days to 120 days following initial intake.

**Prior Subcommittee Hearing (May 3<sup>rd</sup>)—New Cost Containment of Co-Payment:** The Subcommittee adopted modified trailer bill language to implement the Administration's Family Cost Participation Program. The fiscal assumptions of the Administration-- no savings in 2004-05 (\$570,000 POS off-set and a \$570,000 RC Operations cost), and annualized savings of about \$2 million thereafter. **This action remains in effect.** There were no proposed May Revision changes by the Administration to this item.

**Second,** the estimate **reflects a series of technical adjustments. These are as follows:**

- \$17.4 million increase based on updated expenditure data for base costs and related adjustments.
- \$12.6 million increase for community placement plan and continuation costs based on the annual January Regional Center survey.
- \$2 million decrease to reflect updated savings for Community Care Facilities.
- \$1.8 million decrease to reflect decreased need for Gap Resource Development.
- \$3.1 million decrease to reflect updated caseload data for Habilitation Services.

**Third,** federal reimbursements are up by \$8.7 million due to revised expenditure and eligibility data (for the Home and Community Based Waiver). These federal reimbursements are used to off-set General Fund support.

**Subcommittee Staff Recommendation:** It is recommended to **(1)** retain the Subcommittee's actions from the April 19<sup>th</sup> hearing regarding cost containment (as noted above) but to update the fiscal estimates to conform with the May Revision for these items, **(2)** retain the Subcommittee's action from the May 3<sup>rd</sup> hearing regarding the Family cost Participation (as noted above), **(3)** adopt the series of technical adjustments, **(4)** adopt the revised reimbursement levels. **These recommendations conform to the Governor's proposed baseline estimate for the May Revision.**

*(The proposed statewide standards for the Purchase of Services is discussed below.)*

**Budget Issue:** Does the Subcommittee **want to adopt the Governor's baseline estimate** for the May Revision as recommended?

## **2. Governor’s Proposed Statewide Standards for the Purchase of Services**

**Background—The Purchase of Services:** The Regional Centers are responsible for providing a series of services, including case management, intake and assessment, community resource development, and individual program planning assistance for consumers. **Regional Centers also purchase services for consumers and their families from approved vendors and coordinate consumer services with other public entities.**

**As recognized in the Lanterman Act, differences (to certain degrees) may occur across communities (Regional Center catchment areas) to reflect the individual needs of the consumers, the diversity of the regions which are being served, the availability and types of services overall, access to “generic” services (i.e., services provided by other public agencies which are similar in charter to those provided through a Regional Center), and many other factors.**

The DDS, in consultation with the Association of Regional Center Agencies, annually allocates POS funds through a contract process in which each RC receives a base allocation and then subsequent allocations as determined by the DDS. **The allocation of POS funds is primarily based on the previous year’s expenditures plus growth which may not be fully reflective of consumers needs in some areas.**

**Background—Individualized Program Plan (IPP):** The provision of services and supports to consumers is coordinated through the Individualized Program Plan (IPP). **The IPP is prepared jointly by an interdisciplinary team consisting of the consumer, parent/guardian/conservator, persons who have important roles in evaluating or assisting the consumer, and representatives from the Regional Center and/or state Developmental Center.**

**Services included in the consumer’s IPP are considered to be entitlements (court ruling).**

**Background—Statewide Standards for POS Have Been Proposed Twice Before and Rejected by the Legislature:** Past approaches to implementing a statewide standard for the purchase of services have not been particularly constructive. **Generally, the Administration has desired broad authority to (1) prohibit any consumer service or support, (2) unilaterally reduce provider rates, and (3) grant unprecedented authority to the RCs to deny services without any opportunities for consumers to appeal (i.e., no fair hearing process). Further, in reviewing past actual expenditures, it would be near impossible to achieve a significant level of savings in addition to the continued cost containment provisions unless certain services are eliminated and provider rates in many service categories are further reduced.**

**Governor’s May Revision—Similar Standards Proposed for Less Identified Savings:** The May Revision continues the Governor’s original concept from January of implementing statewide standards for the Purchase of Services (POS). *However*, the assumed dollar reduction from the POS standards is significantly less in the May Revision than from January. **This is because the prior year cost containment measures, as discussed above, have reduced the base level funding more than anticipated.** As such, the Administration is assuming a smaller effect from the POS standards in order to achieve the \$100 million in cost savings as originally desired for a reduction level.

**Specifically, the DDS assumes a phased-in approach to the POS standards. Because Individual Program Plan’s are review once every three-years, the fiscal assumptions assume that it will take three years to fully implement (one third of the consumers each year as their IPP is reviewed.). As such, the following fiscal is assumed by the DDS:**

- **2004-05:** Reduction of **\$15.5 million** (\$11.9 million General Fund savings and a loss of \$3.5 million in federal funds.).
- **2005-06:** Reduction of **\$30.9 million** (\$23.9 million General Fund savings and a loss of \$7.1 million in federal funds.).
- **2006-07:** Reduction of **\$46.4 million** (\$35.8 million General Fund savings and a loss of \$10.6 million in federal funds.).

**Key May Revision Assumptions:** In the May Revision, a fiscal estimate is provided which displays the level of savings the DDS *anticipates will be achieved for each of the specified POS standards. Some of the POS standards provisions that are anticipated to achieve the most significant level of savings (annual savings are shown) are the following:*

- Provision (a 6): “The cost of providing services by different vendors, if available, shall be reviewed and the least costly vendor who is able to meet the consumer’s needs, as identified in the consumer’s IPP shall be selected.” (Savings of \$22.7 million annually).
- Provision (a-15): “At least annually, RCs shall provide the consumer or the parents of minors or the conservator a statement of RC purchased services and supports for the purpose of ensuring that units purchased are delivered. The statement shall include the type, unit, month and cost of services and supports.” (Savings of \$5.7 million annually).
- Provision (a-14): “RCs shall establish an internal process to ensure all of the following: A) adherence to all laws and regulations..., E) Final decision regarding the consumer’s IPP...are made within the context of the consumer’s plan meeting....” (Savings of \$5.7 million annually).

**Subcommittee Staff Comment:** Though this proposal is better crafted than prior proposals, there is considerable analytical and policy work that remains to be done prior to any implementation.

**First and foremost is that the proposed trailer bill language gives the Administration carte blanche authority in making programmatic decisions.** The Legislature needs to maintain both the policy and fiscal integrity of the program. **Second, it is unclear how an individual’s IPP would be affected by statewide standards being established.** Without such an analysis, it

is impossible to discern if services are being eliminated, rates are being reduced or other services are being too tightly restricted.

**Subcommittee Request and Questions:** The Subcommittee has requested the DDS to respond to the following questions:

- 1. Please provide a brief description of the May Revision proposal, including key policy and fiscal assumptions.
- 2. How may this proposal interact with the other cost containment proposals?
- 3. How may an individual's IPP be affected by this proposal?
- 4. What may be the unintended consequences of this proposal?

**Budget Issue:** Does the Subcommittee want to modify, adopt or reject the Administration's proposal to implement statewide POS standards?

### **3. Governor's May Revision -- Regional Center Operations Adjustments**

**Background on Regional Center Operations:** The DDS developed the "Core Staffing" formula in 1978. The purpose of this formula was to estimate personnel and related expenditures across all 21 Regional Centers in order to ensure accurate budgeting and facilitate fiscal equity at the Regional Centers across the state. Since this time, the formula has been periodically modified to account for certain changes or trends. However it has been well documented (Citygate and Associates Report of 1998) that the Core Staffing formula no longer accurately reflects costs at the Regional Centers. That said, it is still the tool DDS uses for the development of the Regional Centers Operations budget.

**Generally, the RCs Operations budget consists of four components for staffing and operations purposes. These include: (1) mandated services, (2) support functions, (3) special case add-ons, and (4) non-personnel costs.**

**Governor's May Revision:** The May Revision proposes total expenditures of \$435.6 million (total funds) for Regional Center Operations. This reflects the following **key adjustments**.

- **Unallocated reduction of \$6.5 million** as a cost containment measure. (January proposed trailer bill language was rescinded.)
- **Increase of \$6.1 million for Regional Center staff** to assist in implementing the proposed statewide POS Standards.
- **Increase of \$570,000 to implement the Family Cost Participation Program.** (This augmentation was already adopted by the Subcommittee in its May 3<sup>rd</sup> hearing.)
- **Increase of \$2.8 million** to allow for accelerated enrollment of consumers on the federal Home and Community-Based Services Waiver up to the federal enrollment cap. *(This will assist in drawing down more federal reimbursements to offset General Fund support.)*

**Prior Subcommittee Action (May 3<sup>rd</sup>):** The Subcommittee adopted the Administration's fiscal assumptions for implementing the Family Cost Participation Program which provided \$570,000 to the RCs for staff.

**Subcommittee Staff Comment and Recommendation:** It is **recommended to (1)** adopt the Administration's proposal to reduce by \$6.5 million (unallocated), **(2)** reject the increase of \$6.1 million for RC staff to implement the POS statewide standards, **(3)** retain the Subcommittee's prior action from May 3<sup>rd</sup> to provide the \$570,000 to implement the Family Cost Participation Program, **(4)** adopt the increase of \$2.8 million for the accelerated enrollment of consumers on the Waiver, and **(5)** make any conforming technical adjustments related to caseload and staffing.

**Budget Issue:** Does the Subcommittee want to adopt the staff recommendation as noted above?

**Subcommittee Request and Questions:** The Subcommittee has requested the DDS to respond to the following questions:

- **1. Please provide a brief overview of the May Revision**



## DDS State Headquarter Support

### **1. DDS Positions for Implementing Statewide POS Standards**

**Governor's Finance Letter:** In a Finance Letter, the Administration requested 9 positions and an increase of **\$1.5 million (\$1.3 million General Fund)** for the DDS to conduct specified cost containment actions, including activities related to implementation of (1) statewide POS standards, (2) standardized rates, (3) Self-Determination Waiver, and (4) legal requirements regarding these items.

With respect to the **Statewide Purchase of Services** the DDS notes the following key aspects:

- The two positions are needed given that the development of these standards will raise the most sensitive and complex policy and legal issues affecting the community developmental services system in many, many years. These standards will impact nearly 200,000 consumers and families and over 60,000 vendors and service providers.
- These positions are needed for researching and resolving complex policy and legal issues, working with stakeholders, writing the standards, and shepherding the package through the regulatory process. To meet the requirements of the Administrative Procedures Act, these standards need to be well crafted, legally sound, acceptable to the community, and defensible. These positions would be needed to provide technical assistance and monitoring on an ongoing basis after adoption.

**Prior Subcommittee Action (April 19<sup>th</sup>):** In this hearing, the Subcommittee approved 7 of the 9 positions and related funding as requested. This action included all specified functions except for the two positions and related dollars for the implementation of the statewide standards for POS.

**Subcommittee Staff Recommendation:** It is recommended to reject these two positions and the associated funding.

**Budget Issue:** Does the Subcommittee want to reject these two positions and their associated funding?

**LAST PAGE OF AGENDA**